

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



75-2095

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ASSATA SHAKUR a/k/a JOANNE CHESIMARD,

Plaintiff-Appellant,  
-against-

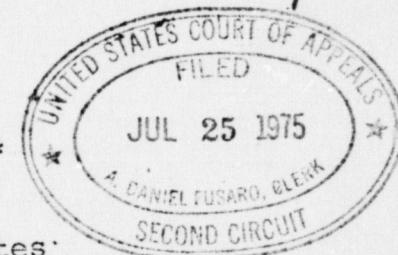
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P/S

BENJAMIN MALCOLM, individually and as  
Commissioner of Correction of the City  
of New York; JOSEPH D'ELIA, individually  
and as Director of Operations, Department  
of Correction, City of New York; ESSIE  
MURPH, Superintendent New York City  
Correctional Institution for Women,

Defendants-Appellees.

On Appeal from the United States  
District Court for the Southern District of New York

APPENDIX



DONALD GRAJALES, ESQ.  
Project Director  
BRONX LEGAL SERVICES, CORP. C  
Attorneys for Appellant  
579 Courtlandt Avenue  
Bronx, New York 10451  
Tel: 212-993-6250

STEPHEN M. LATIMER, ESQ.  
Of Counsel

Bernard Richland  
Corporation Counsel of  
the City of New York  
Municipal Building  
New York, New York 10013  
Attorneys for Appellees

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(con't.)

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PLAINTIFF

DEFENDANT AND CO.

ASCATA SHAKUR a/k/a/ CHEBEARD, JOANNE

EMALCOLM, BENJAMIN-individually and as Commissioner of Correction of the City of New York.,  
 D'ELIA, JOSEPH-individually and as Director of Operations, Department of Corrections, City of New York.,  
 MURPH, ESSIE-Superintendent New York City Correctional Institution for Women

## CAUSE

MW

Injunctive relief and Damages for violation  
 of Prisoners Civil Rights.

## ATTORNEYS

Corporation Counsel  
 Municipal Bldg. NYC 10007

HENSEL L. McGEE  
 RICHARD FISCHBEIN  
 SOUTH BRONX LEGAL SERVICES  
 579 Courtlandt Avenue  
 Bronx, New York 10451  
 993-8200

CASH  
 CHECK  
 MONEY ORDER

DATE

## FILING FEES PAID

RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARDS  
 CARD DATE MAILED

1-29-75 Filed Complaint and Issued Summons.  
Filed Order Permitting Pltf. to Proceed in Ferra Pauperis. (Frankel J.)

2-03-75 Filed pltffs affdvt & Show Cause Order to permit pltffs att'y & his staff access to pltff who is incarcerated.....GRIESA,J. Ret. 2-7-75, Room 129, 5:00 P.M. (Service not made to date)

02-07-75 Filed pltffs memo in support of motion to permit atty's access to pltff.

02-18-75 Filed Memo-End. on motion of 2-3-75. Motion denied. See minutes of 2-13-75. So Ordered, GRIESA,J m/n

03-12-75 Filed summons & Marshal's return. Served:  
• Benjamin Malcolm By: R. Daly 1-31-75  
Joseph D'Elia " "  
Essie Munpit J. Ippolito 3-3-75

3-13-75 Filed ANSWER to complt by defts.

03-13-75 Filed defts demand for jury trial.

6-3-75 Filed affdvts & notice of motion permitting members of pltffs atty's staff to interview pltff at the NYC Corr. Institution for women. Time & date to be set by Court.

6-12-75 Filed defts affdvt in opposition to pltffs motion.

6-12-75 Filed defts memo of law in opposition to pltffs motion.

6-18-75 Filed pltffs memo in support of motion for access to pltff.

6-27-75 Filed Steno Type notes for Transcript of Confidential Hearing before Judge Griesa. (Filed with Cashier's Office)

6-30-75 Filed pltffs notice of appeal to the USCA from order of J. Griesa of 6-27-75. Copy sent to Bernard Richland, Esq., Corporation Counsel, Municipal Bldg., New York, N.Y. Donald Tobias, Of Counsel -566-2506 Attys for defts.

4.12375

Atty's for debtors.  
Filed transcript of record of proceedings, dated 2/13/75

9

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

3a

ASSATA SHAKUR a/k/a/ JOANNE CHESIMARD

Plaintiff

-against-

BENJAMIN MALCOLM, individually and as Commissioner of Correction of the City of New York; JOSEPH D'ELIA, individually and as Director of Operations, Department of Corrections, City of New York; ESSIE MURPH, Superintendent New York City Correctional Institution for Women,

C O M P L A I N T

75 Civ 431

(TPG)

Defendants.

Jurisdiction

1. Plaintiff sues for declaratory and injunctive relief pursuant to 28 U.S.C. §1331, 2201 and 2202 and for damages sustained as a result of deprivations of rights, privileges and immunities guarantees her by 42 U.S.C. §1983, the First, Fourth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution. This Court has jurisdiction of State Law claims under the doctrine of pendent jurisdiction.

Parties

2. Plaintiff is being detained at the New York City Correctional Institution for Women, Rikers Island, New York. ("Womens House of Detention") pending trial in New York State. Courts on criminal charges, and has been so detained since May 1974. She has not been convicted of any crime.

3. Defendant Benjamin Malcolm is Commissioner of Correction of the City of New York. He is the chief administrative officer of the Department of Correction and as such is responsible for the administration and operation of all institutions under the care, custody and control of the Department of Correction.

4. Defendant Joseph D'Elia is Director of Operations of the New York City Department of Correction. He is responsible for directing the activities of all heads of New York City Correctional Institutions. His duties include interpretation and clarification of policies and procedures relating to institutional operations.

5. Defendant Essie Murph is Superintendent of the New York City Correctional Institution for Women. She is responsible for the administration, management, operation and supervision of that institution. She is also responsible for the humane treatment of prisoners.

#### CONDITIONS IN SEGREGATION

6. Plaintiff is presently confined in segregation at the Womens House of Detention. Since May 1974 she has been confined in a cell on the "A" tier of a section of the prison known as 2 Main. The A tier of 2 Main is used to house prisoners who are mentally disturbed and who require psychiatric observation.

7. Plaintiff has not requested, nor has any Court ordered psychiatric observation for her.

8. Plaintiff has never been given a hearing to determine whether segregation is warranted in her case, nor has she been given an opportunity to contest Defendants decision to seg-

regate her from the general population. Plaintiff has not been told how long she will be held in segregation or of any behavior on her part which might result in her release from segregation.

9. Plaintiff was informed by employees or agents of Defendants Malcolm and Murph that she was placed in 2 Main because she is considered a "security risk" and has a "notorious case."

10. The conditions in segregation to which Plaintiff is subjected deprives her of most of the privileges afforded to the general population:

- a) Plaintiff is held in isolation from the general population;
- b) Plaintiff is permitted out of her cell only to attend those activities permitted by Defendants. This "lock out time" is much less than for women in the general population.
- c) Plaintiff is required to eat all her meals in her cell which contains no tables or other furniture for eating. Inmates in general population eat their meals communally in a dining area.
- d) Plaintiff is not permitted to attend the John Jay College program or otherwise participate in educational programs. Inmates in general population are permitted to attend or participate in the various educational programs.
- e) During a substantial portion of her confinement Plaintiff was not permitted to have open visits, as is the general inmate population. Even now her open visits are limited to her mother and 4 month old daughter.
- f) During a substantial portion of her confinement Plaintiff was not permitted to attend law classes. The general inmate population is permitted to attend those classes.

g) During a substantial portion of her confinement Plaintiff was not permitted to attend the law library at a time when the law research assistant was on duty.

h) Plaintiff is permitted to attend the library during the same hours as inmates in the general population. However, the library is cleared of inmates before she is permitted entrance.

i) On information and belief Plaintiff is punished more severely for alleged rule infractions than are inmates in the general population.

j) Plaintiff is not permitted to leave 2 Main without a correction officer guarding her. If Plaintiff asks to go to one of the few activities permitted her, including religious services, the escorting guard often does not pick up Plaintiff until the scheduled activity is almost over, thus effectively depriving her of the opportunity to participate. For example, if gym is scheduled from 6:00 p.m. to 8:00 p.m. Plaintiff will request an escort at 5:30 p.m. Often the guard does not arrive to escort her until after 7:30 p.m.

k) Plaintiff's mail, both legal and personal has been interfered with. Mail from her attorneys is opened outside her presence. Outgoing letters are sometimes not mailed and incoming letters have been delayed for days or weeks before being delivered.

l) Plaintiff is not permitted visits in the same area as the rest of the population of the Womens House of Detention. Because she must be escorted by a correction officer, a substantial portion of the visiting time is dissipated waiting until she is brought to the visiting area.

m) Plaintiff is only permitted to attend the movie once

a week. Even then she must sit with a correction officer escort separate and apart from other prisoners at the movie.

n) Plaintiff has been and is being denied medical care for injuries, including partial periodic paralysis of the right arm and hand, sustained as the result of a gunshot wound.

o) On information and belief Plaintiff's cell is searched more frequently than cells of inmates in the general population. On information and belief Plaintiff is subjected to physical searches of her person more often and under different circumstances than other inmates.

11. As a result of her long and [illegal confinement in segregation with prisoners who are mentally ill] and under psychiatric or other medical observation Plaintiff has suffered and is suffering severe emotional and mental distress.

12. Plaintiff is suffering irreparable injury and is threatened with further irreparable injury by reason of Defendants unconstitutional and unlawful acts. Plaintiff has no adequate remedy at law to redress the constitutional deprivations complained of.

#### FIRST CLAIM

13. The due process clause of the Fourteenth Amendment, state and local law require that before Plaintiff be placed in segregation she be afforded a hearing that provides minimum procedural safeguards including advance written notice of the hearing; an opportunity to present reasons why she should not be segregated from the general population; a statement of the reasons for placement in segregation together with the evidence relied on, and notice of her right to appeal the decision to the appropriate authorities.

14. The segregation of Plaintiff without a hearing including all the elements specified in Paragraph 11 violates her Fourteenth Amendment right not to be deprived of liberty without due process of law.

#### SECOND CLAIM

15. The segregation of Plaintiff under the conditions described in Paragraph 10 is without any justification in law or fact.

16. By virtue of her continued segregation Plaintiff has been deprived of necessary medical care.

17. Segregation of Plaintiff as alleged in Paragraphs 10, 15 and 17 violates her Eighth Amendment right not to have cruel and unusual punishment inflicted.

#### THIRD CLAIM

18. The arbitrary segregation of Plaintiff, having deprived her of association with other inmates violates her right to free association and freedom of expression under the First and Fourteenth Amendments.

#### FOURTH CLAIM

19. The segregation of Plaintiff with its great mental and emotional stress has severely hindered Plaintiffs' ability to assist in the preparation of her defense.

20. The segregation of Plaintiff and the obstruction of her mail severely hinders Plaintiffs' ability to prepare her defense and denies her access to the Courts.

21. The restrictions placed on Plaintiffs use of the law library and the refusal to permit her to attend law classes

hinders Plaintiff ability to assist in the preparation of her defense and denies her access to the Courts.

22. Defendants by their acts as alleged have violated Plaintiff's First, Sixth and Fourteenth Amendment rights.

#### FIFTH CLAIM

23. Defendants have failed to afford Plaintiff all rights guaranteed by law and all privileges enjoyed by the general inmate population as alleged in paragraphs 6 - 12 in violation of her rights under the Fourteenth Amendment to the equal protection of the law.

#### SIXTH CLAIM

24. Defendants failure to afford Plaintiff, who has not been convicted of any crime, the procedural safeguards afforded convicted New York State prisoners who are administratively segregated from the general population violates Plaintiff's Fourteenth Amendment right to the equal protection of the law.

#### SEVENTH CLAIM

25. The extraordinarily frequent searches of Plaintiff's person and cell without any justification violates her right to be free from unreasonable searches under the Fourth and Fourteenth Amendments.

#### EIGHTH CLAIM

26. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 2 - 11.

27. Pursuant to his authority as Commissioner of Correction, Defendant Malcolm promulgated Department of Correction General Order No. 33 effective December 14, 1972. A copy is annexed as Exhibit A.

28. General Order 33, par. 4.48c requires that when an inmate is placed in administrative segregation she "shall not be deprived of any privilege enjoyed by the general population at large." As set forth in paragraph 10, Plaintiff has been deprived of most of the privileges afforded the general population at the Womens House of Detention.

29. Defendants have thus violated Plaintiffs' rights under New York State and local law.

WHEREFORE, Plaintiff prays that this Court:

1. Declare that the conditions alleged violate Plaintiff's rights under 42 U.S.C. 1983, the First, Fourth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution
2. Declare that the conditions alleged violate Plaintiff's rights under New York State and local law.
3. Issue a preliminary and permanent injunction requiring Defendants to place Plaintiff in the general inmate population
4. Issue a preliminary and permanent injunction requiring Defendants to afford Plaintiff all the rights and privileges available to persons in the general inmate population.
5. Issue a preliminary and permanent injunction prohibiting Defendants from segregating Plaintiff from the general inmate population, or from taking any other action which adversely affects Plaintiff, without affording her the procedural safeguards required by due process of law.
6. Issue a preliminary and permanent injunction requiring Defendants to expunge from their records all mention of her

confinement on 2 Main and all reference to Plaintiff as a "security risk" or "notorious case" and other derogatory and prejudicial designations.

7. Award Plaintiff judgement against Defendants in the amount to \$15,000.00; and

8. Order such other and further relief as to the Court may seem just and proper.

DATED:

Yours, etc.

BRONX LEGAL SERVICES, CORP.: C  
579 Courtlandt Avenue  
Bronx, New York 10451  
Tel: 212-993-6250

By:

STEPHEN M. LATIMER, ESQ.

4.48A Administrative Segregation is a classification within a facility of the Department the purpose of which is to keep an individual or individuals segregated from and under closer observation than individuals in the general inmate population at large.

4.48B The following are reasons why an individual may be kept in an Administrative Segregation status:

- a. Medical Observation
- b. Mental Observation
- c. Drug Detoxification
- d. Escape Risk
- e. Suicide Risk
- f. Protective Custody
- g. Homosexual
- h. Cases awaiting the action of the Disciplinary Officer or the Disciplinary Board
- i. Cases that present a threat to the good order, discipline or security of the facility
- j. Any other type of case the head of the institution deems it appropriate in accordance with Rule 4.48A to place in an Administrative Segregation status.

4.48C An individual in an Administrative Segregation status shall not be deprived of any right guaranteed by law, nor shall he be deprived of any privilege enjoyed by the general inmate population at large, except that the head of the institution may, in his discretion, permit these privileges at a different time and at a different place than is permitted to the general inmate population.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ASSATA SHAKUR,

Plaintiff,

-against-

BENJAMIN MALCOLM, et. al.,

## ORDER TO SHOW CAUSE

(T.P.C.)

Defendants.

Upon the annexed affidavit of STEPHEN M. LATIMER, and  
upon all the proceedings had herein: *IT IS HEREBY ORDERED*

*THAT* Let the Defendants show cause before this Court at the  
United States Courthouse, Foley Square, New York, in Room 129,

*before the Honorable FREDERIC G. DAVIS, on January 7, 1975, at 9:30*  
A.M. or as soon thereafter as counsel can be heard why an order  
should not issue requiring Defendants to permit Plaintiff's  
attorney and his staff access to Plaintiff, who is presently in-  
carcerated in the New York City Correctional Institution for  
Women, on the same basis as attorneys who represent Defendants  
on criminal indictments; and for such other and further relief as  
to the Court may seem just and proper, *IT IS FURTHER*  
*ORDERED THAT* Sufficient cause appearing therefore, let personal  
service of a copy of this order to show cause together with a  
copy of the papers on which it is based on the Corporation Counsel  
of the City of New York on or before *JAN. 30*, 1975 at 5:30 P.M.  
be good and sufficient service.

DATED: New York, New York  
January , 1975

*S/*  
U. S. D. J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ASSATA SHAKUR,

Plaintiff,

-against-

A F F I D A V I T

BENJAMIN MALCOLM, et. al.,

Defendants.

STATE OF NEW YORK)  
COUNTY OF BRONX ) ss.:

STEPHEN M. LATIMER, being duly sworn says:

I am the attorney for Plaintiff. I make this affidavit in support of an application to permit myself and members of my staff to interview Plaintiff and potential witnesses on the same basis as attorneys who have/retained or assigned to defend the underlying criminal charges.

My office has been asked to represent Plaintiff in the prosecution of her claims that by her continued confinement in administrative segregation, the New York City Department of Correction is depriving her of substantial civil and constitutional rights. The issues in the case are complex, and their proper preparation will require frequent consultation with Plaintiff at Rikers Island by me and my staff. The procedures now employed by the Department of Correction for attorneys not involved with the criminal case interfere substantially with the necessary access to Plaintiff.

When an attorney files a notice of appearance in a criminal case, he most often will file a document called "Notice to the Warden" with the appropriate prison authority. He is then entitled, without further ado, to interview his client in the prison at any

time during the normal attorney visiting hours of the particular institution. Any other attorney, even if he is the attorney of record in a pending civil action, must go to the Department of Correction at least a day in advance and secure a special one day visitors pass. On occasion, at the whim of the Correction Department, an attorney may be required to obtain the permission of the Court in which the criminal charges are pending before he is permitted to consult with his client.

The instant action involves complex factual issues about the administration of the segregation area of the Womens prison on Rikers Island. Ferreting out the proof of Plaintiff's allegations will require regular and frequent consultation with Plaintiff by myself and other paraprofessional and supportive legal staff. Such consultation is expressly permitted by the United States Supreme Court in Procunier v. Martinez, 94 S.Ct. 1800, 42 U.S.L.W. 4606, 4614 (1974). To require me or my staff to follow the procedure outlined above every time we need to consult with my client or potential witnesses will place an unconcionable burden on my ability to adequately represent Plaintiff and to properly prepare the case for trial.

I therefore request that this Court issue its order in the form annexed permitting me and my staff to consult with my client and potential witnesses on the same basis as other attorneys.

I bring this motion by order to show cause rather than notice of motion because it is crucial that I have free access to my client at the earliest opportunity.

No prior application for the same or similar relief has been made to this Court or any Judge thereof.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ASSATA SHAKUR,

Plaintiff,

-against-

BENJAMIN MALCOLM, et. al.,

Defendants.

Plaintiff, by her attorney, having moved this Court for certain interim procedural and substantive relief; and after hearing the attorneys for the parties it appearing that the relief requested is reasonable and proper; and due deliberation having been had, it is ORDERED that:

1. Plaintiff's attorney and his staff shall be permitted entrance to the New York City Correctional Institution for Women and any other institution under the care custody and control of the New York City Department of Correction in which Plaintiff or potential witnesses in the action may be housed, upon production of proper identification as a member of Plaintiff's attorneys staff, for purposes of interviewing Plaintiff and potential witnesses, and examining relevant Department of Correction records concerning Plaintiff and potential witnesses.

2. Plaintiff's attorney and his staff shall be permitted to interview inmates of the various institutions during normal counsel visiting hours in those areas normally utilized for attorneys visits and under the same conditions as defense attorneys visits.

3. For purposes of this order Plaintiff's attorney and his staff shall consist of those persons listed in Exhibit A annexed hereto. Exhibit A may be amended from time to time by adding or deleting names therefrom upon three days written notice to the Corporation Counsel, sent by ordinary mail.

DATED: New York, New York  
January , 1975

U. S. D. J.

Plaintiffs Attorneys and Staff

Stephen M. Latimer  
Merle Ratner  
Maxine Dume  
Jeannine Smith  
Lumumba Shakur  
Mutulu Shakur  
Afeni Shakur  
Wakil Shakur

\* \* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

19a

ASSATA SHAKUR, a/k/a JOANNE CHESIMARD, :

Plaintiff, :

-against- : AFFIDAVIT

BENJAMIN MALCOLM, et. al., :

Defendants. :

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK)

DONALD J. TOBIAS, being duly sworn, deposes and says that:

1. He is an Assistant in the Office of W. BERNARD RICHLAND, Corporation Counsel of the City of New York, attorney for the defendants in the above encaptioned matter. This affidavit is submitted in opposition to the instant motion.

2. The moving papers request that this Court permit the plaintiff's attorney and certain named associates virtually limitless access to the institutions and records under the control of the Department of Correction.

3. It must be made clear that the Department of Correction has no intention of impeding the reasonable consultation between attorney and client. The Department has therefore established procedures to be utilized in specific cases. In cases where an inmate has commenced, or is considering commencing, a civil action, his attorney will be given a pass to see said inmate upon

filling a request for such a pass with the Department's Director of Legal Affairs.

4. The moving papers submitted on behal. of the plaintiffs are incorrect in stating that plaintiff's attorney must serve a one day's pass each time he visits his client, or that the Department requires this attorney to obtain permission of the Criminal Court before such consultation is permitted. In fact, plaintiff's attorney, upon application with the office of the Director of Legal Affairs, will be afforded a 30 day pass to confer with his client during regular attorney visiting hours in force at the Womens House of Detention. In the event that further consultation is requested, this pass will be renewed upon application.

5. Plaintiff, in addition, requests that this Court order that certain designated "staff" members of his attorneys office be afforded access under the rules applicable to attorney visits. Said request is unacceptable, for a variety of reasons. The attorney visits that take place at the Womens House of Detention, are "open visits", that are conducted in a manner respectful of the attorney client relationship. Such visits take place in non-partitioned booths, thereby permitting free contact between attorney and client. Such visits are permitted between the hours of 9 am - 5 pm on weekdays, and 9 am - 12:30 pm on Saturdays. There are no time limits placed upon an attorney visit conducted within these designated

6. This situation contrasts greatly with the rules and practices governing personal visits. Due to such factors as high demand and institutional limitations, inmates at the Womens' detention facility may receive one visit of one-half hours duration on weekday evenings.

These visits are "closed visits" taking place in a partitioned booth. The detainees may receive, in addition, one "open" (i.e. non-partitioned) personal visit month.

7. It is clear then, that the above visitation rules would be circumvented by allowing anyone designated by the attorney to visit an inmate under the attorney visitation rules, which, as mentioned, are longer, permitted more frequently, are conducted in an "open" atmosphere.

8. Moreover, in structuring the attorney visitation rules, which, being "open", relatively unsupervised and of indefinite length, the defendants have reason to expect that an attorney, whose character has been subject to vigorous investigation, and who is in fact an officer of the Court, and subject to its censure, will do nothing to endanger the security of the institution. Other individuals, who have not had their character subjected to such scrutiny, cannot be afforded such treatment.

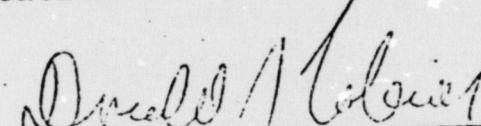
9. Finally, it is urged that plaintiff's attorney and staff be permitted to interview inmates "in the various institutions" during normal attorney visiting hours. As stated earlier in this affidavit, the Department

of Correction does not limit attorney access, and in those cases where inmates in other institutions request to consult with counsel for the plaintiffs, an appropriate pass will be issued by the office of the Director of Legal Affairs.

10. The instant motion also requests that the plaintiff's attorney be permitted access to "relevant Department of Correction records concerning plaintiff and potential witnesses." Simply stated, said requests bypasses the entire discovery process set forth on the federal rules of civil procedure.

11. Inasmuch as the procedures already adopted afford the necessary attorney client access, the motion should be denied, in all respects.

WHEREFORE, the application should be denied.

  
DONALD J. TOBIAS

Sworn to before me this  
day of February, 1975

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

23a

ASSATA SHAKUR a/k/a JOANNE CHESIMARD

Plaintiff,

-against-

BENJAMIN MALCOLM, individually and as  
Commissioner of Correction of the City  
of New York; JOSEPH D'ELIA, individ-  
ually and as Director of Operations,  
Department of Corrections, City of New  
York; ESSIE MURPH, Superintendent New  
York City Correctional Institution for  
Women,

ANSWER

75 Civ. 431

Judge Griesa

Defendants.

The defendants, by their attorney, W. BERNARD  
RICHLAND, Corporation Counsel of the City of New York,  
answering the complaint herein:

1. Deny each and every allegation set forth  
in paragraph "1", "7", "9", "13", "14", "16", "22", "23", "26",  
and "29" of the complaint.

2. Deny the allegations set forth in paragraph  
"2" of the complaint but admit that plaintiff is being de-  
tained at the New York Correctional Institution for  
Women, Rikers Island, New York awaiting criminal charges.

3. Admit that Benjamin Malcolm is Commissioner,  
New York City Department of Correction, as alleged in  
paragraph "3" of the complaint. Defendants refer this  
Court to the New York City Charter and Administrative  
Code for a description of the duties and responsibili-  
ties covered by such position.

4. Deny the allegations set forth in paragraph "4" of the complaint but admit that Joseph D'Elia presently serves as Director of Operations of the New York City Department of Correction.

5. Deny the allegations set forth in paragraph "5" of the complaint but admit that Essie Murph is the Superintendent of the New York City Correctional Institution for Women.

6. Deny the allegations set forth in paragraph "6" of the complaint but admit that plaintiff is presently confined in the "A" tier of a section of the institution known as "2 Main".

7. Deny the allegations set forth in paragraph "8" of the complaint, but admit that plaintiff, whose segregation did not result in a loss of rights or privileges afforded to other detainees, was not afforded a hearing regarding her placement in 2 Main. Defendants further deny that plaintiff, when placed in punitive segregation, was not afforded a hearing or given an opportunity to contest the charges.

8. Deny the allegations set forth in paragraph "10", "10a", "10b", "10c", "10d", "10e", "10f", "10g", "10h", "10i", "10k", "10n", and "10o" of the complaint.

9. Deny the allegations set forth in paragraph "10j" of the complaint but admit only that plaintiff cannot leave the 2 Main area without being accompanied by a correction officer. Defendants deny any allegations in this paragraph that contend that plaintiff is deprived of activities afforded to other detainees at the institution.

10. Deny the allegations set forth in paragraph "10L" of the complaint except admit that plaintiff's closed visits, though conducted in the same manner as the closed visits that are afforded to general population detainees, are conducted in a different geographical location within the institution. Plaintiffs open visits are conducted in the same area in which such open visits are afforded to general population detainees.

11. Deny the allegations set forth in paragraph "10m" of the complaint to the extent that it alleges that other detainees are permitted to see greater numbers of movies per week.

12. Deny the allegations set forth in paragraph "11" of the complaint and further deny those portions of the paragraph in which it is alleged that plaintiff's confinement is illegal, or that she is illegally confined with inmates who are mentally ill.

13. Deny the allegations set forth in paragraph "12" of the complaint and further deny the statements contained in said paragraph to the extent that they allege unconstitutional or unlawful acts on the part of the defendants.

14. Deny the allegation set forth in paragraph "14" of the complaint and further deny the allegations set forth in paragraph "11" of the complaint.

15. Deny the allegations set forth in paragraph "15" and further deny that plaintiff is confined in conditions as described in paragraph "10" and its subdivisions.

16. Deny the allegations set forth in paragraphs 17 and "18" of the complaint and further deny that plaintiff is deprived of association with other inmates.

17. Deny the allegations set forth in paragraph "19" of the complaint and further deny that plaintiff's conditions of incarceration have subjected her to emotional stress.

18. Deny the allegations set forth in paragraph "20" of the complaint and further deny that plaintiff's mail has been obstructed.

19. Deny the allegations set forth in paragraph "21" of the complaint and further deny that plaintiff has been denied the use of the law library or the ability to attend law classes.

20. Deny the allegations set forth in paragraph "24" of the complaint and further deny that defendants have denied plaintiff the procedural safeguards afforded to administratively segregated New York State prisoners.

21. Deny the allegations set forth in paragraphs "25" of the complaint and further deny that plaintiff's cell or person has been excessively, extraordinarily or unjustifiably searched.

22. Deny the allegations set forth in paragraph "28" of the complaint to the extent that it alleges that plaintiff has been deprived of most of the privileges afforded to the general population at the Women's House of Detention.

AND, AS A FIRST, AFFIRMATIVE AND COMPLETE DEFENSE, DEFENDANTS ALLEGE THAT:

23. The Court lacks jurisdiction over the persons of the defendants in that service was not effected as required by the Federal Rules of Civil Procedure.

AS A SECOND, AFFIRMATIVE, AND COMPLETE DEFENSE, THE DEFENDANTS ALLEGE THAT:

24. The Court lacks jurisdiction over the subject matter of this action, in that it fails to allege a deprivation, under color of law, of any right, privilege or immunity secured by the constitution or laws of the United States.

AS A THIRD, AFFIRMATIVE AND COMPLETE DEFENSE, THE DEFENDANTS ALLEGE THAT:

25. The complaint fails to state a cause of action upon which relief may be granted.

AS A FOURTH, AFFIRMATIVE, AND COMPLETE DEFENSE, THE DEFENDANTS ALLEGE THAT:

26. The defendants are officers within the Department of Correction, charged with the duty of administering the operation of City detention facilities, including supervision of personnel and inmates in accordance with the provisions of the Correction Law, and rules and regulations of both the New York City Department of Correction.

27. Accordingly, the defendants claim immunity from liability herein in that as officers of an agency of government, they were performing governmental and administrative duties, and that any acts complained of herein were impersonal to the plaintiff, and were done in good faith and in performance of official duty, necessary for the proper, orderly and lawful purposes of the de-

AS A FIFTH AFFIRMATIVE AND COMPLETE DEFENSE, THE DEFENDANT MURPH ALLEGES THAT:

28. She is charged with administering the Women's House of Detention for Men in accordance with the rules, directives and orders promulgated by the Department of Correction. In administering said rules and regulations with respect to the plaintiff, said defendant exercised such an administrative function, entirely in good faith.

AND, AS A SIXTH, AFFIRMATIVE AND COMPLETE DEFENSE,

The action is barred by the invocation of the doctrine of res judicata.

WHEREFORE, the complaint should be dismissed, in all respects.

Yours, etc.,

W. BERNARD RICHLAND  
Corporation Counsel  
Attorney for Defendant  
Municipal Building  
New York, New York

By: Donald J. Tobias  
DONALD J. TOBIAS

Dated: March 3, 1975.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ASSATA SHAKUR,

Plaintiff,

75 Civ. 431 (TPG)

-against-

BENJAMIN MALCOLM, et. al.,

Defendants.

## NOTICE OF MOTION

Upon the annexed affidavits of STEPHEN M. LATIMER, AFENI SHAKUR, JEANNINE SMITH and ANTHONY LABORDE, and upon the prior proceedings, the undersigned will move this Court at the United States Courthouse, Foley Square, New York, on June 9th, 1975, before the Honorable Thomas P. Griesa for an order a) permitting members of Plaintiff's attorney's staff to interview Plaintiff at the New York City Correctional Institution for Women under the same conditions of time, privacy and confidentiality as attorneys might; and b) compelling Defendants to disclose the reasons why they have denied such interviews, including the facts relied on.

Yours, etc.



DONALD GRAJALES, ESQ.  
Project Director  
BRONX LEGAL SERVICES, CORP. C  
579 Courtlandt Avenue  
Bronx, New York 10451  
Tel: 212-993-6250  
STEPHEN M. LATIMER, ESQ.,  
Of Counsel  
Attorneys for Plaintiff

\* \* \* \*

dj

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----\*  
ASSATA SHAKUR,

Plaintiff,

A F F I D A V I T

-against-

75 Civ. 431 (TPG)

BENJAMIN MALCOLM, et. al.,

Defendants.

-----\*  
STATE OF NEW YORK)  
COUNTY OF BRONX ) ss.:

STEPHEN M. LATIMER, being duly sworn says:

I am the attorney for Plaintiff. I make this affidavit in support of Plaintiff's motion to permit her attorney's staff to interview her within the guidelines for attorney visits.

The difficulties and burdens of visiting Rikers Island were detailed in my affidavit of January 28, 1975, and the accompanying brief and need not be re-iterated here. I plan to conduct substantial discovery proceedings including the use of depositions, discovery and inspection and other devices provided for in the Federal Rules of Civil Procedure. Close consultation with my client prior to any discovery is essential if I am to elicit the relevant information to prosecute the action. When discovery is completed, it will be necessary for me and my staff to consult with Ms. Shakur to properly evaluate the information received. Then, of course, as trial nears, or it becomes appropriate to prepare a motion for summary judgment, frequent consultations will be necessary to prepare witnesses to testify, or to prepare affidavits in support of the summary judgment motion.

Because of the peculiar situation of incarcerated clients, i.e.; they cannot come to my office, because of the isolation of Rikers Island, and to make the most efficient use of attorney's time, I depend on my para-legal staff to interview and consult with clients at State prisons, as well as with other prisoners on Rikers Island.

Afeni Shakur, Jeannine Smith and Anthony LaBorde have been employed by Bronx Legal Services as stated in their affidavits submitted in support of this motion. For at least one year they have assisted me in various prisoners rights cases. They have been active in all phases of the litigation including, drafting pleadings and affidavits, doing legal research, preparing witnesses for trial and interviewing clients and witnesses. All three assistants have interviewed clients and witnesses in New York State prisons on the basis of a telephone call from me advising the institution of their proposed visit. Ms. Shakur and Ms. Smith have interviewed clients at the New York City Correctional Institution for Women, the same prison that holds Plaintiff, without incident or complaint.

The other persons on the list annexed to my previous affidavit are volunteers who have worked with me or Bronx Legal Services in a variety of ways. Generally, as with many volunteer programs they perform tasks, either on an emergency basis or as part of a continuing program, that paid staff are unable to do.

After this Courts order denying the relief sought in the previous motion, because, among other things, the Court felt that the Defendant's regulations were reasonable, I discussed the issue with Assistant Corporation Counsel, Donald Tobias. Mr. Tobias agreed that I am entitled to reasonable investigative services,

similar to those of Legal Aid Society's prisoners Right project in its litigation involving Rikers Island. He suggested that I submit a letter to William Ritholz, Director of Legal Affairs for the Department of Correction, stating the name, address, present employment and investigative experience of the investigator, as well as the date of the proposed visit and its purpose. On April 1, 1975, I submitted a letter to permit Lumumba Shakur and Wakil Shakur to interview my client. A copy is annexed as Exhibit "A". A one day visitors pass was issued to each person, and revoked without reason within hours of the scheduled visit.

The Department of Correction steadfastly refused to tell me the reasons for their arbitrary action, but indicated that a paid employee of Bronx Legal Services might be permitted access. I then wrote to Mr. Ritholz seeking permission for Ms. Shakur, Ms. Smith and Mr. LaBorde. A copy of that Letter is annexed as Exhibit "B". The Defendants response is annexed as Exhibit "C". Despite repeated requests, Defendants again have obstinately refused to tell me reasons for their refusal, thus necessitating the instant motion.

At a pre-motion conference the Defendants remained obdurate in their arbitrary refusal to permit my staff to have access to Plaintiff. They indicated that they had unspecified information from an unidentified source upon which their decision was based, but contrary to basic principles of fundamental fairness and constitutional due process they refused to reveal the reasons for that decision.

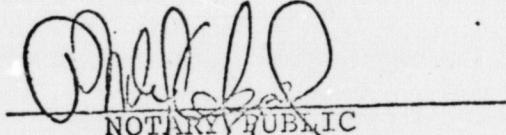
The litigation is important to protect my clients rights

as a pre-trial prisoner. The necessity for protracted proceedings on the issue of Plaintiff's access to her counsel and his staff, especially in light of counsels heavy reliance on that staff, has hindered and delayed the progress of the action to an unconscionable degree. I therefore request that my staff be permitted access to Plaintiff under conditions suitable for attorney - client interviews so that we may proceed to the merits of the action.



STEPHEN M. LATIMER

Sworn to before me this  
30 day of MAY, 1975



NOTARY PUBLIC  
PHILIP A. SEGAL  
NOTARY PUBLIC, STATE of NEW YORK  
No. 31-40136  
QUALIFIED in NEW YORK COUNTY  
CITY, DATE FIELD in NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1977

\* \* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ASSATA SHAKUR,

Plaintiff,

A F F I D A V I T

-against-

BENJAMIN MALCOLM, et. al.,

75 Civ. 431 (TPG)

Defendants.

STATE OF NEW YORK)  
COUNTY OF BRONX ) ss.:

AFENI SHAKUR, being duly sworn, deposes and says:

1. I am presently employed at South Bronx Legal Services as a Legal Services Assistant and have worked in this capacity for approximately three years.

2. As such I have been involved in legal suits on behalf of inmates confined under the New York State Department of Corrections.

3. In order to adequately prepare the legal suits for women incarcerated in New York State facilities, my functions appropriately include consulting with the individual, research and investigation, preparing affidavits and notarizing sworn statements.

4. That I have been involved in this investigative work for approximately two years both at Bedford Hills Correctional Facility and at Rikers Island.

5. That I have provided access to the courts for indigent prisoners by visiting them and doing all investigative work on their cases.

6. That I have always been allowed in the New York State Prisons upon 24 hours notice to the proper department heads.

7. That to deny Assata Shakur investigators of her choosing will clearly hamper the propriety of her case and render her defense at a clear disadvantage. Additionally, her access to the courts will be greatly diminished.

Afeni Shakur  
AFENI SHAKUR

Sworn to before me this

30<sup>th</sup> day of May, 1975.

Viola D. Garris

NOTARY PUBLIC

VIOLA D. GARRIS  
Notary Public, State of New York  
No. 03-4501705  
Qualified in Bronx County  
Commission Expires March 20, 1977

\* \* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ASSATA SHAKUR,

Plaintiff,

A F F I D A V I T

-against-

BENJAMIN MALCOLM, et. al.,

75 Civ. 431 (TPG)

Defendants.

STATE OF NEW YORK)  
COUNTY OF BRONX ) ss.:

I, Anthony N. LaBorde, being duly sworn, deposes and says:

1. I am employed at South Bronx Legal Services as an Legal Services Assistant (L.S.A.), and have worked there One and a half years.

2. My functions include legal research and investigation, as well as process serving.

3. It is necessary for me to see clients involved in law suits for one or several of the above mentioned purposes.

4. I have done investigative work on several suits for approximately One year.

5. I have interviewed clients (inmates) at State correction facilities in order to properly prepare their cases.

6. That the State Department of Correction has never refused me entrance to see clients in the past. The only requirement was 24 hours notice of visit.

7. I was never given a reason(s) why I could not be permitted to Rikers Island by Department of Corrections to interview Plaintiff.

8. I am engaged in a Civil proceeding involving  
Ms. Assata Shakur and have been denied access to her by the  
Department of Correction, City of New York, and therefore  
unable to adequately prepare her case.

Anthony N. LaBorde  
ANTHONY N. LABORDE

Sworn to before me this

30 day of May, 1975.

AFENI SHAKUR  
Notary Public, State of New York  
No. 03-4597855  
Qualified in Bronx County  
Commission Expires March 30, 1977

Afeni Shakur

NOTARY PUBLIC

\* \* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ASSATA SHAKUR,

Plaintiff,

A F F I D A V I T

-against-

BENJAMIN MALCOLM et. al.,

75 Civ. 431 (TPG)

Defendants.

STATE OF NEW YORK)  
COUNTY OF BRONX ) ss.:

Jeannine Smith, being duly sworn, deposes and says:

1. I am presently employed at South Bronx Legal Services as a Legal Services Assistant and have worked in this capacity for approximately two years.

2. As such I have been involved in legal suits on behalf of inmates confined under the New York State Department of Corrections.

3. In order to adequately prepare the legal suits for women incarcerated in New York State facilities, my functions appropriately include consulting with the individual, research and investigation, preparing affidavits and notarizing sworn statements.

4. That I have been involved in this investigative work for approximately two years both at Bedford Hills Correctional Facility and at Rikers Island.

5. That I have provided access to the courts for indigent prisoners by visiting them and doing all investigative work on their cases.

6. That I have always been allowed in the New York State Prisons upon 24 hours notice to the proper department heads.

7. That to deny Assata Shakur investigators of her choosing will clearly hamper the propriety of her case and render her defense at a clear disadvantage. Additionally, her access to the courts will be greatly diminished.

Jeannine Smith  
JEANNINE SMITH

Sworn to before me this

30 day of May, 1975.

AFENI SHAKUR  
Notary Public, State of New York  
No. 03-1532635  
Qualified in Bronx County  
Commission Expires March 30, 1977

NOTARY PUBLIC

\* \* \* \*

## BRONX LEGAL SERVICES CORPORATION C.

HUNTS POINT OFFICE  
 579 COURTLANDT AVENUE  
 BRONX, N. Y. 10451  
 (212) 993-6250

*AND*  
 GRAJALES, ESQ.  
 ACT DIRECTOR

MICHAEL FAHEY  
 ACTING MANAGING ATTORNEY

April 1, 1975

William Ritholz  
 Director of Legal Affairs  
 100 Centre Street  
 New York, N. Y. 10013

Re: SHAKUR v. MALCOLM  
USDC SDNY 75 CIV. 431

Dear Mr. Ritholz:

Pursuant to agreement with Mr. Tobias of the Corporation Counsel, please permit Lumumba Shakur and Wakil Shakur - a/k/a Tyrone Turner, to interview my client, Assata Shajur - a/k/a Joanne Chesimand, under the same conditions and in the same place as attorneys. The following information is furnished for each:

LUMUMBA SHAKUR

Address  
 1187 Anderson Avenue  
 Bronx, New York  
 Tel. No. 538-4075

Investigative Experience

Has done legal investigation for Gerald Lefcourt and for Bronx Legal Services on a volunteer basis for six years.

WAKIL SHAKUR - a/k/a -  
Tyrone Turner

Address  
 2552 University Avenue  
 Bronx, New York  
 Tel. No. 364-3238

Investigative Experience

Has done legal investigations on a volunteer basis for Stanley Cohen - 15 Park Row, New York, N.Y. for two years.

LUMBA SHAKUR and  
WIL SHAKUR

Employment

Albert Einstein College of  
Medicine, Drug Rehabilitation  
Program as a drug counsellor

Employment

Lincoln Detox - of Lincoln  
Hospital as a drug counsellor

Criminal Record

Last arrest - 1969  
Last Conviction - 1960

Criminal Record

Last arrest and conviction - 1968

Neither investigator is related to my client. They will interview  
Ms. Shakur when I am unable to go to Rikers Island. They will  
obtain information relevant to the pending case, give her copies of  
legal papers, and obtain affidavits as necessary.

Wakil Shakur will visit my client on Thursday, April 3, 1975.  
Lumumba Shakur will visit on Friday, April 4, 1975.

Please call me if there are any problems.

Very truly yours,

  
Stephen M. Latimer  
Director of Law Reform

SML/rb

April 10, 1975

William Ritholz, Esq.  
Director of Legal Affairs  
100 Centre Street  
New York, N.Y. 10013

Re: SHAKUR v. MALCOLM  
USDC SDNY 75 Civ. 431

Dear Mr. Ritholz:

Please permit Afeni Shakur and Anthony LaBorde to interview my client, Assata Shakur, a/k/a/ Joanne Chesimard, under the same conditions and circumstances that I, her attorney, am permitted to visit.

Ms. Shakur and Mr. LaBorde are employed by my office as investigators and para-professionals. Both have assisted me in several of my cases. Ms. Shakur has visited my clients in State prisons as my assistant and has never had any problems.

The purpose of the interviews will be to obtain information necessary to the prosecution of the case, and to show my client, and discuss with her, certain legal papers that are part of the case. Please call me promptly to discuss a visiting date.

Very truly yours,

SML/rb

Stephen M. Latimer  
Director of Law Reform

THE CITY OF NEW YORK  
DEPARTMENT OF CORRECTION  
100 CENTRE STREET  
NEW YORK, N.Y. 10013  
Tel. 374 5715

43a



ALVIN J. MALCOLM  
Commissioner

William Ritholtz

*Director of Legal Affairs*

April 11, 1975

Stephen M. Latimer  
Director of Law Reform  
Bronx Legal Services Corporation C.  
Hunts Point Office  
579 Courtlandt Avenue  
Bronx, N.Y., 10451

Dear Mr. Latimer:

In reply to your letter of April 10, 1975, wherein you request permission to have your investigators interview your client Assata Shakur, aka Joanne Chesimard, on a civil matter, please be advised that the following is the policy of the Department of Correction with reference to this issue:

"(e) In the event the attorney designates any other person to visit the inmate with reference to a civil matter, this designated person shall apply to the court upon notice to the Department of Correction, and shall state the reason(s) for the requested visit. The court shall determine on the application whether this visit is necessary."

Yours truly,

A handwritten signature in black ink, appearing to read "William Ritholtz".

WILLIAM RITHOLTZ  
Director of Legal Affairs

Wllisag

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

44a

ASSATA SHAKUR, a/k/a JOANNE CHESIMARD, :

Plaintiff, :

-against- : AFFIDAVIT

BENJAMIN MALCOLM, et. al., :

Defendants. :

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

DONALD J. TOBIAS, being duly sworn, deposes and  
says that:

1. He is an Assistant in the Office of W. BERNARD RICHLAND, Corporation Counsel of the City of New York, attorney for the defendants in the above encaptioned matter. This affidavit is submitted in opposition to the instant motion.

2. Plaintiff requests that this Court order that certain designated "staff" members allegedly connected with the Bronx Legal Services Corporation be afforded access to the Women's House of Detention under the rules applicable to attorney visits. Said request is unacceptable, for a variety of reasons. The attorney visits that take place at the Womens House of Detention are "open visits", that are conducted in a manner consistent with the attorney client relationship. Such visits take place in non-partitioned booths, thereby permitting free contact between attorney and client.

Such visits are permitted between the hours of 9 am - 5 pm on weekdays, and 9 am - 12:30 pm on Saturdays. There are no time limits placed upon an attorney visit conducted within these designated hours.

3. This situation markedly contrasts with the rules and practices governing personal visits. Due to such factors as high demand and institutional limitations, inmates at the womens' detention facility may receive one personal visit of one-half hours duration on weekday evenings. These visits are "closed visits" taking place in a partitioned booth. The detainees may receive, in addition, one "open" (i.e. non-partitioned) personal visit each month.

4. It is clear then, that the above visitation rules would be circumvented by allowing any person designated by an attorney to visit an inmate under the attorney visitation rules, which, as mentioned, are longer, permitted more frequently, and are conducted in an "open" atmosphere.

5. Moreover, in structuring the attorney visitation rules, which, being "open", relatively unsupervised and of indefinite length, the defendants have reason to expect that an attorney, whose character has been subject to rigorous investigation, and who is in fact an officer of the Court, and subject to its censure, will do nothing to enganger the security of the institution. Other individuals, who have not had their character subjected to such scrutiny, cannot, without further evaluation, be afforded such treatment.

6. Nevertheless, despite the Department's interest in insuring (a) that the counsel area is utilized only for

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consultation (and not for additional unsupervised "personal" visits) and (b) that the open, unsupervised "counsel visits" do not endanger the security and safety of the institution, the plaintiff insists that she is entitled to receive the open, unsupervised "counsel visits" from virtually any person designated by her attorney.

7. The Department has not adopted rules forbidding bona fide legal assistants or paralegals from utilizing the counsel area. The department does, however, review every such request on the merits and denies those requests it seems to be inappropriate.

8. In the case at bar, the defendants have decided that they cannot reasonably permit the individuals named in the moving papers to consult with plaintiff in the characteristically open and unsupervised "counsel visit" setting. Said determination is based upon an examination of said individuals' criminal records, as well as confidential data collected from various law enforcement agencies. In the event this Court wishes to examine this information, for the purposes of deciding whether defendants' acts were rationally related to their duty to maintain safe and orderly correctional facilities, such information can be provided on a confidential bases.

9. An example of the sheer frivolity of plaintiffs' request involves their demand that this Department permit one Anthony Laborde to utilize counsel facilities, and to meet with plaintiff in the open atmosphere that characterize counsel visits. Mr. Laborde has an extensive criminal record involving convictions for very serious offenses including

several weapons violations, robbery and most recently, a conviction (on October 30, 1974) for possession of an explosive device (he received 2 years probation). A copy of Mr. Laborde's arrest record is included herein as Exhibit A. In addition to Mr. Laborde's long criminal record, it is the department's belief, based upon information within its possession, that his presence in such a setting would create risks to the order and security of the institution.

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10. The request that Ms. Smith and Ms. Afeni Shakur be permitted to utilize such facilities is similarly frivolous. In both cases, there exist substantial information that these individuals also present risks to institutional security. Moreover, Ms. Smith's criminal record includes a 1972 conviction for shoplifting. And, of course, the affidavit submitted by the three alleged "paralegal" fail to demonstrate that said individuals possess any qualification for this role other than their appointment by plaintiff's attorney.

11. It should be noted that the Department of Correction has not prevented Mr. Laborde, Ms. Smith or Ms. Shakur from visiting and consulting with plaintiff. During the institutions' regular visiting hours, the above named persons may visit with plaintiff in accordance with the regular personal visitation procedures.

12. Finally, it is clear that the moving papers have failed to demonstrate the necessity for the requested relief. The moving papers, while concluding that consultations

between the plaintiff and the alleged paralegals are necessary  
fail to state what information they desire to obtain, or  
demonstrate that continuing consultations will be required.

WHEREFORE, the motion should be denied in all  
respects.

*Donald J. Tobias*

DONALD TOBIAS

Sworn to before me this

11<sup>th</sup> day of June 1975

*Allen London*  
ALLEN F. LONDON, Notary Public,  
State of New York, No. 01-4537801  
Qualified in New York County  
Commission Expires March 30, 1976

ARCHIBALD P. MURRAY  
CIVILIAN

STATE OF NEW YORK - EXECUTIVE  
DIVISION OF CRIMINAL JUSTICE SERVICES  
IDENTIFICATION AND INVESTIGATION  
EXECUTIVE PARK TORONTO  
321 EYEWALL PLACE  
50 FELIX HILL, NEW YORK 10003

49a  
CONFIDENTIAL

SECRETARY, 1974

This certifies that finger prints of the following named subject have been compared and the following is a true copy of the records of this office.

5 1964 3162 2549

285

501  
Archibald P. Murray

TRINITY CHURCH

RECEIPTORS OF FINGERPRINTS	NAME AND NUMBER	ADMITTED OR RECEIVED	CHARGE	SUBMISSION
ED 103 Pct.	Anthony LaBorde 642933	5-5-66	Robbery	
ED 103 Pct.	Anthony Nicholas 642933 LaBorde Nicky LaBorde	11-20-66	1751 P.L.	
ED Civ. Serv. any NY	Anthony Nicholas LaBorde	Rec'd 5-6-67 5-10-67	Attendance Dept of Mental Health Crownover & Hill	
ED 81st Precinct Jamaica NY	Anthony LaBorde 116-53 143rd St. Jamaica NY	Print Rec'd 1-5-68	To visit Preider Robin LaBorde 240-676	

0722.1

This certificate is unsupported by fingerprints in D.O.I. (See  
if it is necessary for further assistance in you in this matter.)

ARCHIBALD D. MURRAY

STATE OF NEW YORK - EXECUTIVE DEPARTMENT  
 DIVISION OF CRIMINAL JUSTICE SERVICES  
 IDENTIFICATION AND INFORMATION SYSTEM  
 EXECUTIVE PARK TOWER  
 1201 STUYVESANT PLAZA  
 ALBANY, NEW YORK 12203

CONFIDENTIAL 50a

COMMISSIONER

February 27, 1974

This certifies that fingerprints of the following named subject have been compared and the following is a true copy of the records of this system.

6-25-72

INDEX NO. 11965427 1163-1972 -2-

*Archibald D. Murray*

COMMISSIONER

ORIGINATOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
FD 73 Det. City of Albany, NY	Anthony LaBorda 4343	Received 6/5/68	CR 152 Mercury Industrial Inc.	
FD 73 Det.	Anthony LaBorda 642983	6-25-72	PL 220-03-3 & 522 Assault 2	
FD 73 Det. 112	Anthony Nicholas LaBorda	2-25-72	PL 160, 16-21 & 521 Robbery 2nd. 1st. & 55. 20 -3. E Fel. 2d. 2nd. 3rd.	
FD Det. 24	Anthony LaBorda 642983	2-5-74	PL 215, 53-00-1 & 11 Bail jumping 2nd. 2nd.	

\*Fingerprints forwarded to appropriate law enforcement agencies

\*Fingerprints forwarded to appropriate law enforcement agencies

642 983 51a  
IDENTIFICATION CARD

The following FBI record, NUMBER

2-6

, is furnished FOR OFFICIAL USE ONLY.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD NY NY	Anthony LaBorde #642983	5-6-66	Robbery (Physical Force)	
PD NY NY	Anthony Nickolas LaBorde #642983	11-26-66	1751 P.L. Marijuana	
Crim Crts City of NY NY NY	Anthony LaBorde #Q1935/66	3-23-67	722-2	
PD Charlotte NC	Anthony Nichols LaBorde #35517	3-7-68	Inv & no opr lic	
PD NY NY	Anthony LaBorde #642983	5-25-70	PL 120.05 aslt 2nd PL 195.05 govt obst	
USM Detroit Mich	Tony A. Hart Jr. #12820	8-9-71	Harbouring Fugitives	
FD NY NY	Anthony Nicholas La Borte #642983	1-25-72	PL 160.10 01 robbery 2 PL 155.30 01 CL	
PD Detroit Mich	Tony Anthony Hart #291528	8-12-71	CCW on person	conv: Att 1 to 2½ yr SPSM
State Prison of Southern Mich Jackson Mich	Anthony Laborde #A-131718	1-24-72	att CCW	1-2½

Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. When a final disposition is not shown or further explanation of charge is desired, communicate with agency contributing these fingerprints.

Notations indicated by "att CCW" based on fingerprints in FBI files but are listed only as investigative leads as being possibly identical with subject of this record.

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535

2-28-74 591 AJR : 52a

2. The following FBI record, NUMBER 841 954 F, is furnished FOR OFFICIAL USE ONLY. Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. WHERE DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS DESIRED, COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
Prob Dept Supreme Crt Kew Gardens NY	Anthony Nicholas LaBorde #26576	1-25-72	Robb 3rd deg	NYSDC-3yrs conc. with sent no being served
Fed Det Hdqtrs NY NY	Anthony LaBorde #76330 158	8-5-72	E-NY-WHC Fy Jackson SPR Mich Firearms Pooling. USDJ	
FBI NY NY	Anthony Nicholas Nicholas LaBorde #	FRR S 8-15-72	BR Suspect	
USM Detroit MI	Anthony Nicholas LaBorde 16136	6-18-73	escaped prisoner	NG/Jury
FD NY NY	Anthony LaBorde 642983 SID 1196542J	2-6-74	PL 215.56 bail jumping 2	

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 ||

3 ASSATA SHAKUR

4 Plaintiff

3 V.S.

BENJAMIN MALCOLM, et al.

### Defendants.

-----

10 BEFORE: HONORABLE THOMAS P. GRIESA,

11 District Judge

12 June 27, 1975  
New York, N.Y. - 10:30 a.m.

14 APPEARANCES:

15 DONALD GRAJALES, ESQ.,  
16 Attorney for Plaintiff  
BY: STEPHEN M. LATIMER, ESQ., of Counsel

17 W. BERNARD RICHLAND, ESQ.,  
18 Corporation Counsel, City of New York  
BY: DONALD TOBIAS, ESQ.,  
Assistant Corporation Counsel

20 WILLIAM RITHOLTZ, ESQ.,  
Attorney for Department of Correction

1 lh/lf

2

2 THE COURT: The reason I convened a hearing today  
3 was in response to an offer from the defendants to present  
4 material to me in-camera regarding the reasons why they  
5 feel that they should not permit certain of the persons in-  
6 volved in this action to attend at Rikers Island an interview  
7 with the plaintiff there on the same basis as attorneys  
8 conduct interviews.

9 There is certain public information available  
10 about certain of the proposed interviewers, about criminal  
11 records, but, but the defendants wanted to present other  
12 information which is not of a public nature, which they  
13 regard as information that they are relying on, it is their  
14 position that they state that such information is confidential  
15 and shouldn't be revealed to the plaintiff or anyone on the  
16 plaintiff's side.

17 I think the defendants should have the opportunity  
18 to present this to me. I'd like to know just in general  
19 a little more fully about what is the reason for confidentiality.  
20 Is this because of the possibility of revealing the names of  
21 informants? What is the reason?

22 MR. TOBIAS: Your Honor, that is one of the  
23 reasons. Another reason is we don't want to make public our  
24 operating procedures, and I am afraid that I would have to  
25 have this session in-camera to explain that more fully.

2 THE COURT: All right, I will have the session  
3 in-camera.

4 MR. LATIMER: May I be heard on that, your  
5 Honor?

6 MR. TOBIAS: The offer of proof we made was  
7 conditional. We don't really feel that it is necessary  
8 in that there is really no federal claim here, in our opinion.  
9 In other words, the right to interview, the right to access  
10 by nonprofessionals, we don't feel rise to a constitutional  
11 right in the first place. We feel the threshold hasn't been  
12 achieved. In other words, the threshold question being  
13 whether or not there is a constitutional right for ordinary  
14 lay people to have this type of access. We are not denying  
15 anyone or these people in particular the right to visit  
16 Ms. Shakur. It is just a question of whether the special type  
17 of nonsecured attorney visits that exist in Riker's Island  
18 that we have to be very, very careful about, we feel this  
19 is something within the department's discretion.

20 If you disagree with our theory here, obviously  
21 we are prepared to go ahead and give you this information.  
22 But I think that it does require a consideration of the threshold  
23 question we presented.

24 THE COURT: I didn't really feel it was presented  
25 in quite that way. I think you may very well be right that

2      without anything presented to me in the way of this additional  
3      information, you would succeed, but, frankly, I think that if  
4      these are circumstances which you are relying on or the defen-  
5      dants are relying on in making their determination, then I  
6      think that ought to be before the Court. Even if it is before  
7      the Court in-camera, it will still be something known to the  
8      Court, and I wouldn't be in the dark about all the circum-  
9      stances. That obviously presents a problem because if it  
10     is heard in-camera, it is not something which the plaintiff  
11     and her counsel can hear, and that is a problem. But those  
12     problems occur in other contexts, and that is not insurmount-  
13     able.

14           Whether it will be anything I rely on in my  
15     decision, I didn't hear it. It may be that I will decide  
16     in your favor on a basis completely outside and without re-  
17     gard to these additional circumstances. I really am not in  
18     a position at the moment to say that. I just want to hear  
19     all the circumstances before I finally make my decision.

20           MR. LATIMER: Your Honor, I would, of course,  
21     most strongly object to hearing this information in-camera,  
22     but I, too, don't believe that at this stage that is necessary.  
23     Of course, the Court knows that I rely as a constitutional  
24     right for my client on Procunier against Martinez and also on  
25     the Sousa case which was cited by the defendant.

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2                   However, an incident that occurred within this  
3                   past week I think reveals the frivolous nature of the corpora-  
4                   tion counsel's objections. My office has another client who  
5                   is incarcerated in the Women's House of Detention on Riker's  
6                   Island. Her name is Mrs. Emma Williamson. Yesterday Mr.  
7                   LaBorde and Miss Smith were issued special visiting pass  
8                   number 7412 to visit with Miss Williamson in the Women's  
9                   House of Detention on Riker's Island.

10 They went out to Riker's Island, and if the  
11 corporation counsel so wishes I will put Mr. LaBorde on  
12 the stand to testify as to what happened when he went to  
13 Riker's Island, but, briefly, they went to Riker's Island.  
14 The visiting booths for counselors when they got there were  
15 full. They were escorted inside the Women's House of Deten-  
16 tion, a man with the criminal record of Mr. LaBorde which  
17 the corporation counsel disparages so much, was escorted  
18 inside the Women's House of Detention and was given a private  
19 office to interview Miss Williamson. They stayed there for  
20 just under two hours holding a confidential, private interview.  
21 If they are saying that Mr. LaBorde -- it is totally incon-  
22 sistent with any claim of threat to institutional security,  
23 and I think that that shows completely that they are just --  
24 this particular litigation doesn't involve the city or the  
25 Department of Corrections. It might involve other agencies

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6.

2 of the city, I don't know, but it doesn't involve the Depart-  
3 ment of Correction. I think that it just highlights the  
4 attempts of the city to obstruct the process -- the progress  
5 of the litigation. This is Miss Shakur and Miss Smith who  
6 just came into the courtroom. If Mr. LaBorde or Mis Smith  
7 constitute a threat to the security of the institution, then  
8 I don't think that the city would have allowed them the access  
9 they had yesterday. I think that claim is totally specious.

10 THE COURT: What does the city say about that?

11 MR. TOBIAS: Your Honor, again, the situation  
12 with the persons who visited yesterday is a much differen-  
13 situation than visiting Miss Shakur, and you will see why  
14 when we get in-camera. Also, I would like to add that we  
15 are more vigilant in determining who gets to visit particular  
16 inmates. Again, for particular reasons which will become very  
17 clear later on.

18 THE COURT: In other words, you are telling  
19 me that you have no blanket seclusion of people of -- of  
20 paraprofessionals, assistants, and you don't even have a  
21 blanket exclusion of these individuals, you examine it on a  
22 case basis and you make a determination?

23 MR. TOBIAS: Your Honor, that is correct. I  
24 would say this, that had it been brought to my attention that  
25 people with criminal records were getting this type of access

2 in the attorney consultation context, I would have seen to it  
3 that that had been stopped. I frankly didn't know about this  
4 visit. But I think that the circumstances are clearly  
5 distinguishable.

6 THE COURT: At least to me on first blush it is  
7 a little confusing. If it is just an administrative error,  
8 that's one thing. If it is a really conscious decision that  
9 Mr. LaBorde and Miss Smith can safely visit some people but  
10 there is a particular problem about the plaintiff here,  
11 that's another thing, and it may be perfectly valid. I don't  
12 know. I don't quite know where you stand. So who has the  
13 responsibility of deciding who can make what kind of visits  
14 to whom over in Riker's Island?

15 MR. TOBIAS: It is generally decided by the  
16 administrative staff at the institution, at the Women's  
17 House of Detention. However, they often don't have communica-  
18 tion with the central office which does have the appropriate  
19 intelligence information. I would categorize this --

20 THE COURT: The central office of what?

21 MR. TOBIAS: The Department of Correction. I  
22 would characterize this as an administrative error. I would  
23 also say that the situations are distinguishable in that it  
24 is quite possible that upon evaluating the situation, which  
25 we have not done, we might very well have let these people

2 Interview other people, with the exception of Miss Shakur.  
3 I would say on first blush, knowing what I know about the  
4 individuals we are dealing with, they shouldn't have access  
5 to the counsel room at all. Certainly not with respect to  
6 Miss Shakur. I would characterize it, yes, as an administra-  
7 tive error.

8 THE COURT: Are they permitted to go to other  
9 institutions?

10 MR. TOBIAS: Apparently they would be. I would  
11 say that this is something that the department should be  
12 made more conscious of. I would say that the department  
13 hasn't been as vigilant as they could be as far as seeing  
14 that certain people have these privileges.. I would say they  
15 are particularly vigilant when it comes to people categorized  
16 as escape risks. Perhaps they should be more vigilant with  
17 respect to the entire population.

18 We have a number of people, it numbers about 50,  
19 who are categorized as escape risks. The department has  
20 basically focused their attention on these people.

21 THE COURT: I think there was mention in the  
22 paper about certain of these people visiting these people  
23 under Ossining. Ossining is not under the Department of  
24 Corrections.

25 MR. TOBIAS: That is a mixed situation, your Honor.

2 We do have leased certain space from the state. I don't know  
3 whether they visited state prisoners or city prisoners. I  
4 am not certain.

5 THE COURT: I guess what you are saying is that  
6 there may not be at this time any blanket exclusion of any  
7 of these individuals by the Department of Corrections.

8 MR. TOBIAS: That's correct.

9 THE COURT: So it may be that they are allowed  
10 to visit other prisoners, and you are saying that that might  
11 be subject to reexamination.

12 MR. TOBIAS: Absolutely. I think it is safe to  
13 say it will be subject to reexamination.

14 THE COURT: But, in any event, you are concerned  
15 with this particular case and you have particular reasons for  
16 this particular case.

17 MR. TOBIAS: Yes.

18 THE COURT: Mr. Latimer, it wasn't clear on -- in  
19 the papers, I don't think it was clear, perhaps you could  
20 clarify it now, Afeni Shakur, is there a criminal record  
21 for that person?

22 MR. LATIMER: Afeni Shakur was one of the defen-  
23 dants in the Panther 21 trial four years ago, and she was  
24 acquitted of all charges in that case.

25 THE COURT: When I say criminal record, I mean

2 convictions.

3 MR. LATIMER: No, no convictions. She was working  
4 at Bronx Legal Service longer than I have, as a matter of  
5 fact, since then. But there are a couple of comments that I  
6 would like to make in response to Tobias and then I would  
7 like to get to the issue of confidentiality of these records.8 In the first place, Mr. LaBorde, Miss Shakur and  
9 Miss Smith have all interviewed people in the state institutions  
10 without incident. I received no complaints from any institution  
11 that these people have visited, and I assure you that the  
12 state's Department of Correction, the Attorney General, would  
13 bring each such incident to my attention.14 Yesterday, to my knowledge, there was absolutely  
15 no problem in these interviews. The process by which a person  
16 secures a pass to go out there belies any claim of administra-  
17 tive error.18 First, a letter is written by the director of  
19 the program, the managing attorney of the office, requesting  
20 permission to go out and interview a particular client for  
21 a particular reason. Then they must go down to 100 Centre  
22 Street to the Department of Legal Affairs, present the letter,  
23 and where a pass, if the request is approved, a pass is then  
24 issued, the pass is signed by an official at the Department  
25 of Correction, it is entered in a log, maintained by the

2 Department of Correction, and if it is approved, it is issued,  
3 the person is free to go out on a particular day.

4 The Department of Correction, as I know in another  
5 case they have revoked a pass when they found out it was an  
6 administrative error. In fact, another potential interviewer  
7 in this particular case -- I strongly doubt that there was  
8 any administrative error.

9 Secondly, not only were they taken into the  
10 counsel room, which is on the first floor near the entrance-  
11 way, and not any -- well, it is beyond the secured part of  
12 the institution, but not deep within the heart of the insti-  
13 tution, they were taken upstairs to an office when there were no  
14 other facilities available. I doubt whether this was all in  
15 the category of administrative error. It just seems highly  
16 unlikely to me, unless there is a grave question of competence,  
17 of which I am not even making a claim.

18 Secondly, this so-called escape risk, to my  
19 knowledge there has never been any claim made anywhere that  
20 Assata Shakur has attempted to escape from custody on  
21 Riker's Island. In Stack vs. Boyle, a bail case, the  
22 district court set bail of \$100,000 on a Smith Act defendant  
23 on the grounds that a dozen other Smith Act defendants had  
24 fled the country and had skipped bail. The Supreme Court  
25 said no, you can't do that. You must consider each individual

2 case. They can't consider the fact that Pedro Monges tried  
3 to escape from the Brooklyn House of Detention, which is a  
4 well known fact, in deciding whether Miss Shakur is an escape  
5 risk. Guilt by association is one of the things that this  
6 country was founded to be free of.

7 THE COURT: We don't need all that.

8 MR. LATIMER: But this is the claim they are  
9 making, that --

10 THE COURT: Take it easy. You mentioned the  
11 Legal Aid assistants in your papers. Legal Aid assistants  
12 with criminal records, are they allowed to make these open --

13 MR. LATIMER: Yes, they are. I have spoken with  
14 people at Legal Aid, and they are.

15 THE COURT: I will hear the information in-camera

16 MR. LATIMER: Your Honor, may I be heard on  
17 that particular point?

18 THE COURT: I know you object, and you have your  
19 record. Okay.

20 MR. LATIMER: The only claim made by the city  
21 is that they have, "confidential data," and this is Mr.  
22 Tobias' affidavit, confidential data collected from various  
23 law enforcement agencies. In Black against Sheraton Corpora-  
24 tion at 371 Federal Supplement at page 102, the District Court,  
25 relying on a series of precedents dating down from United States

2 against Reynolds, the Adamson case, Coplon, and so on, laid  
3 down the standards in a civil case where a claim of privilege -  
4 to invoke a claim of privilege and the circumstances under  
5 which a claim of privilege will be honored.

6           They first said that investigatory files are  
7 not, per se, confidential, exempt from disclosure. If dis-  
8 closure is to be prevented, if evidence is to be considered  
9 in-camera, if evidence -- and I would like to know for my  
10 own records anything that is involving my employees, quite  
11 frankly, but if there is anything they don't want to show,  
12 the government agency, that they don't want to show an adversary  
13 party, it must be prepared for connection with litigation,  
14 administrative proceeding or a pending criminal prosecution.

15           I would submit the Department of Correction is  
16 not a prosecutorial agency. They cannot collect this informa-  
17 tion and simply for intelligence purpose and refuse to review  
18 it. Particularly when they are a party to a case that the  
19 information is essential. There must be some action pending  
20 or imminent, and I doubt whether the Department of Corrections  
21 is about to prosecute anybody. None of these people that I  
22 know of is the target of a grand jury investigation or the  
23 defendant in a civil action for God knows what or anything else.  
24 The material if it is to be disclosed must be material that  
25 is not necessary for adjudication of the motion, and, clearly,

2 due process requires reasons for actions, for administrative  
3 actions, be given to the adversary party. Clearly they are  
4 relying on information that is absolutely necessary in this  
5 context for the adjudication of this motion, and it is a vio-  
6 lation of just about every due process procedure to hear this  
7 information in-camera. It is not a state secret, obviously.  
8 It is not information for use in connection with a pending  
9 criminal prosecution. It is not information that I know  
10 of that is for use in any pending civil action, in any action  
11 before an administrative body that has any adjudicative power.

12 THE COURT: Mr. Latimer, I haven't heard their  
13 information. It may not be that they have -- it may not  
14 be that they have any valid claim of confidentiality, but I  
15 won't know until I hear it. I won't know whether there is  
16 anything that would fall within your guidance or any other  
17 guidelines until I hear it. It is very standard practice  
18 when there is a claim of confidentiality that the Court  
19 hear that claim in-camera to initially make some kind of a  
20 determination. The situation you have got here is, it seems  
21 to me, a pretty simple common sense thing. There is a person  
22 incarcerated at Riker's Island on criminal charges. That  
23 person is suing as a plaintiff in this action, and you are  
24 representing her in this civil action complaining of prison  
25 conditions. You assert that you have a right to have several

2 employees of your legal service organization go out and inter-  
3 view the plaintiff in this action. That's your application,  
4 right?

5 MR. LATIMER: It is not my right.

6 THE COURT: Okay. With that amendment --

7 MR. LATIMER: I think that is a very crucial  
8 amendment, that it is her right, and not mine.

9 THE COURT: I will accept that. She is saying  
10 she has a right to be interviewed by these people, right?

11 MR. LATIMER: That's correct.

12 THE COURT: The defendants come along and say  
13 that they have a certain amount of discretion in refusing  
14 certain kinds of people, as far as those people coming  
15 out and being accorded the free interview privileges of  
16 lawyers at Riker's Island. They say that they have based  
17 their decision in refusing these people in part on information  
18 that involves possibly confidential information and/or in-  
19 volves the possibility of some kind of criminal plans, I  
20 haven't heard it so I don't know, but I am just stating it  
21 in general terms.

22 It may be that the information they have is valid  
23 information for them to rely on, and it may also be that  
24 that is information of great sensitivity and shouldn't be  
25 revealed to the public because it relates to ongoing criminal

2      problems. So how do I resolve that problem? Do I say I  
3      won't hear them, I won't learn about their considerations?  
4      Well, that is one way to approach it. But I don't think I  
5      will approach it that way. I think I want to know all the  
6      facts and if I find that there is really no valid claim of  
7      confidentiality, I will reveal the information to you to the  
8      extent I feel I can. If I feel there is a valid claim of  
9      confidentiality, I won't reveal it, and I think now we will  
10     retire to the robing room and I will have the defense counsel  
11     in and we will hear the information.

12                    MR. LATIMER: Your Honor, I would object again,  
13     and the Court is in error on the grounds of U.S. vs. Reynolds  
14     and other cases cited.

15                    (A robing room conference, on the record, was  
16     ordered sealed by the Court.)

17                    (In open court)

18                    THE COURT: Let me clarify one thing, Mr. Latimer.  
19     The original application which you filed back in January  
20     asked for access by several people, there was yourself,  
21     and then no problem on that, Merle Ratner, Maxine Dume, Jeannine  
22     Smith, Lumumba Shakur, Mutulu Shakur, Afeni Shakur and  
23     Wakil Shakur. The latest application seems to refer only to  
24     three persons, and that is Afeni Shakur, Jeannine Smith and  
25     Anthony LaBorde. There are changes in the people. Do I

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17

2 understand that the present application is for the plaintiff  
3 to be interviewed by the three people named in the present  
4 application, that is Afeni Shakur, Jeannine Smith and Anthony  
5 LaBorde?

6 MR. LATIMER: Yes, the present application is,  
7 because it is based particularly on a denial of those people.  
8 I would renew the application for the others as well.

9 THE COURT: It is a little confusing because  
10 I don't have any affidavits by them, I don't have any papers.

11 MR. LATIMER: At least two of them, Wakil Shakur  
12 and Lumumba Shakur, requests have been made to the Department  
13 of Correction. Those requests were denied and the correspon-  
14 dence, what little correspondence there is with the Department  
15 of Correction on those two --

16 THE COURT: You are making an oral application now  
17 for -- who?

18 MR. LATIMER: For the people on that list. If  
19 the Court wants further information, I will be happy -- more  
20 than happy to supply all the information about those people  
21 that the Court wants.

22 THE COURT: Who is Merle Ratner?

23 MR. LATIMER: Merle Ratner is present in the court.  
24 She is standing up in the yellow dress.

25 THE COURT: Who is --

2 MR. LATIMER: She is a paralegal, she has worked  
3 with me on several different cases within the last couple  
4 of years.

5 THE COURT: Is there any problem about Merle  
6 Ratner?

7 MR. TOBIAS: Yes, your Honor. I would just like  
8 to point out, there is actually a precedent for this in that last  
9 week, precisely one week ago today, Mr. Latimer made the  
10 same application before Judge Judd with respect to Miss  
11 Ratner's visiting one Pedro Monges, another escape risk,  
12 someone who presented similar problems that Mis. Shakur does.  
13 Judge Judd summarily denied this application, and I think  
14 this court should respect the department's position with  
15 respect to people we have classified as extremely dangerous.  
16 I can point to the precedent in Judge Judd's chambers last  
17 week. Mr. Latimer was there. Judge Judd said, "Don't make  
18 a motion. I won't entertain the request. Mr. Monges is a  
19 special case."

20 I submit that similarly Miss Shakur is a special  
21 case and that we do reserve the right to limit the investigatory  
22 services given to her.

23 MR. LATIMER: I would submit again, this man is  
24 trying to do this guilt by association thing. Miss Shakur is  
25 a different case from Pedro Monges.

2 THE COURT: First of all, this application, this  
3 presents me with somewhat of a confusing situation. We had  
4 the application back in January as to all these people.  
5 Then there appeared to be a settlement, and then there was  
6 a renewal of the application on papers as to only three people,  
7 and I have tried as best I could to deal on the papers and  
8 on the basis of the information I received in-camera with  
9 these three people. Now to be told when I walk out here, and  
10 I think the ruling should be made promptly, now to be told  
11 that the application is renewed on other people, this is --  
12 I know I asked you to clarify it, but the clarification isn't  
13 clarification. It is just --

14 MR. LATIMER: Your Honor, at this time I will  
15 just deal with the people who are actually on the payroll of  
16 the Bronx Legal Services, that is the three people with  
17 me at counsel table.

18 THE COURT: All right, that gets it clarified.  
19 That means Afeni Shakur, Jeannine Smith and Anthony LaBorde.

20 MR. LATIMER: That's correct.

21 THE COURT: Let me put a statement on the record  
22 which constitutes my opinion on this motion.

23 This statement is as follows:

24 Plaintiff Assata Shakur, also known as Joanne  
25 Chesimard, is an inmate in the New York City Correctional

2 Institution for Women at Riker's Island. She is held there on  
3 criminal charges in state court. She brings the present civil  
4 action in this federal court challenging conditions at the  
5 Riker's Island Institution. The application is now made on  
6 behalf of plaintiff for an order permitting three persons  
7 employed by plaintiff's counsel in this civil action to inter-  
8 view plaintiff in relation to her civil suit. It is asserted  
9 by plaintiff's attorney in this civil suit that there is a  
10 need to have these three people interview plaintiff in order  
11 to avoid undue burden on the attorney himself in connection  
12 with this action. The specific needs for such extensive inter-  
13 viewing have not been spelled out. There is no specific  
14 indication of exactly why it is necessary in this civil action  
15 to have a total of four people, namely the attorney and the  
16 three other persons, engage in such interviews with the plain-  
17 tiff. However, I am denying the motion because I am convinced  
18 that the Department of Corrections has properly exercised  
19 a necessary discretion in the interests of security in refusing  
20 permission for the three persons to have attorney's privileges  
21 in interviewing plaintiff. The names of these three persons,  
22 the proposed interviewers, are Afeni Shakur, Jeannine Smith  
23 and Anthony LaBorde.

24 With regard to the regulations at the Women's  
25 House of Detention, it appears that what are called open

2 visits can be conducted between bona fide attorneys and bona fide  
3 staff members of attorneys. These visits are permitted  
4 between the hours of 9:00 a.m. and 5:00 p.m. on weekdays  
5 and 9:00 a.m. and 12:30 p.m. on Saturdays. There are no  
6 time limits placed upon an attorney visit, as long as the  
7 visit is conducted during those designated hours. The visits  
8 are permitted in nonpartitioned booths so that there is free  
9 conduct between the attorney and the client. Apart from  
10 these attorney visits, inmates at the detention facility  
11 may receive one personal visit of a specified duration on  
12 weekday evenings. These visits are what are called closed  
13 visits, that is, they take place in a partitioned booth.  
14 The prison authorities assert that the limitations on such  
15 visits are required by security and by the other factors,  
16 such as the high demand for such personal visits and the need  
17 for some reasonable restriction and control of them.

18 In addition to these closed visits, inmates at the  
19 facility may receive one open or nonpartitioned personal visit  
20 each month. The Department of Corrections asserts in this  
21 proceeding, and this assertion appears to be correct, that  
22 the department does not have a blanket rule for bidding bona  
23 fide legal assistants or paralegals from utilizing the free  
24 visits for purposes of interviews and legal consultation.  
25 However, the department does review each such request from

2 legal assistance or paralegals and pass on these requests  
3 as it feels appropriate. The Department of Corrections is  
4 concerned lest the unlimited and uncontrolled use of open  
5 visits which should be available to bona fide attorneys and  
6 their assistants might be used to circumvent the restrictions  
7 on personal visits and might be used to jeopardize the security  
8 of the institution.

9 It appears that there are good and sufficient  
10 reasons why the Department of Corrections has refused to  
11 allow open visits or attorney visits to be carried out by  
12 Afeni Shakur, Jeannine Smith and Anthony LaBorde. LaBorde  
13 has a long and serious criminal record which includes convic-  
14 tion in the fall of 1974 for possession of an explosive de-  
15 vice for which he received two years probation, which he is  
16 now serving. It appears that Jeannine Smith also has a  
17 criminal record. As to Afeni Shakur, it appears that there  
18 are no convictions, although she was a defendant in a criminal  
19 action in which she was acquitted.

20 I have received evidence in chambers in a sealed  
21 record which convincingly supports the propriety of denying  
22 Afeni Shakur, Jeannine Smith and Anthony LaBorde the privilege  
23 of attorney visits to plaintiff at Riker's Island. The  
24 Department of Corrections has concluded that plaintiff Assata  
25 Shakur, also known as Joanne Chesimard, is a high risk as far

2      as escape attempt. There is a reasonable basis for this con-  
3      clusion.

4                They have further concluded that they must take  
5      special precautions in limiting access to this plaintiff to  
6      the extent that they cannot permit Afeni Shakur, Jeannine  
7      Smith and Anthony LaBorde the privilege of attorney visits  
8      to her. The information and the evidence received in-camera  
9      on the sealed record satisfactorily justifies, in my view,  
10     and beyond question, the decision of the Department of  
11     Corrections to the effect that to permit the three persons  
12     in question the privilege of attorney visits would jeopardize  
13     the security and enhance the escape risk attendant upon the  
14     plaintiff in this action.

15               I further hold that the nature of the information  
16     which was conveyed to me on the sealed record in chambers is  
17     such that it should not be disclosed to plaintiff, to her  
18     attorney or to the three proposed interviewers or to the  
19     public. It relates to ongoing criminal problems and investi-  
20     gations and it would be most inappropriate, to say the least,  
21     to authorize its disclosure. I am not asserting that all  
22     of the information is of a private nature. Some of the in-  
23     formation conveyed to me had to do with past criminal  
24     records of certain individuals, arrests, and so forth, which  
25     are matters of public record. But the really crucial information

2 was a matter which must be held, I believe, in confidence.

3 The plaintiff relies most strongly on the Supreme Court case

4 of Procunier vs. Martinez 416 U.S. 396, as a basis for

5 asserting that the three interviewers should be permitted

6 the right to the attorney visits at Riker's Island. However,

7 the present case is clearly different from the Procunier

8 case. In the Procunier case the Supreme Court was dealing

9 with a flat ban on paraprofessional personnel and other

10 legal assistants as far as access to prisons to assist

11 attorneys. There is no flat ban here. The Supreme Court

12 in the Procunier case specifically noted that there might be

13 situations where an alleged paraprofessional or legal

14 assistant might well be denied access as an attorney because

15 of a colorable threat to security. The latter situation is

16 what we have here, and for that reason the present application

17 is denied. I should take into account the assertion that

18 one or more of these persons has at times been permitted

19 attorney visits in city and state institutions. It may be

20 that in connection with certain inmates the risk is not

21 as great as it is with the plaintiff here. I cannot deal

22 with the other cases which I do not have before me. It

23 may well be that upon a tightening up of the procedures in

24 the Department of Corrections, they will decide not to permit

25 access in attorneys visits on the part of any of the three

2 persons involved to any prisoners or inmates in the system.  
3 Whether or not that would be proper, I wouldn't attempt to  
4 decide in this case, but the fact that there may have been  
5 some visits or attorneys visits by one or more of these three  
6 persons to other inmates in the system in the past does not  
7 mean that the Department of Corrections must continue to  
8 afford them access or that the Department of Corrections must  
9 afford them access to the plaintiff here. For the reasons  
10 stated, the motion is denied.

11 MR. LATIMER: A couple of things that I would  
12 like clarification on.

13 One, I notice that Mr. Tobias has Murray Kempton's  
14 book, "The Briar Patch," which deals in part at least with  
15 Afeni Shakur. I would like to know if that information was  
16 considered -- if material from that book was presented in  
17 chambers, and, if so, I would like the page numbers of that  
18 particular information because certainly "The Briar Patch"  
19 is not confidential information. It involved incidents that  
20 happened over five years.

21 THE COURT: To my knowledge, he did not. I  
22 noted no reference to any book.

23 MR. LATIMER: Secondly, I would like to know  
24 whether the information that was presented to this court  
25 in-camera was the result of wire tap or any other electronic

2      surveillance equipment. If it was, there are serious questions  
3      as to the legality of the wire taps and that surveillance,  
4      and under federal law that information has to be made known  
5      or it cannot be considered, period.

6                    THE COURT: There was no indication of such.

7                    MR. LATIMER: I would like to know, of course,  
8      I would ask from the Department of Correction whether any of  
9      this information was received by way of wire tap and  
10     electronic surveillance, because there would be a serious  
11     question. This is to the Department of Correction. I  
12     want to know whether any of this information was wire tap  
13     or surveillance, because then there becomes a serious ques-  
14     tion as to the legality of that surveillance, which would be  
15     challenged.

16                   THE COURT: I will say right now I am not going  
17     to have a lot of questioning here. The information presented  
18     to me was specified in such a way as to exclude that.  
19     Whether there is other information that may be presented  
20     somewhere else or is available, the information presented  
21     to me would not include that, and we will have no further  
22     discussion of that.

23                   MR. LATIMER: Next I would ask now, I realize  
24     this is an interlocutory order, and I am asking this court  
25     for permission to appeal its decision to the Court of Appeals

1 lh/lf

27 (26a)

2 for the Second Circuit pursuant to the appropriate statutes.

3 THE COURT: You can make an application for --  
4 you can look at the statutes and see what applications are  
5 available. I can't act on that kind of an application.

6 That's all we will take care of.

7 (Court adjourned)

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----\*  
ASSATA SHAKUR, a/k/a JOANNE CHESIMARD

Plaintiff,

-against-

## NOTICE OF APPEAL

BENJAMIN MALCOLM, individually and as  
Commissioner of Correction of the City  
of New York; JOSEPH D'ELIA, individually  
and as Director of Operations, Depart-  
ment of Corrections, City of New York;  
ESSIE MURPH, Superintendent New York  
City Correctional Institution for Women,

75 Civ. 431 (TPG)

Defendants.

-----\*  
Notice is hereby given that Assata Shakur, plaintiff,  
hereby appeals to the United States Court of Appeals for the  
Second Circuit from the order of Judge Griesa entered June 27,  
1975, denying plaintiff's motion (1) to permit members of her  
attorney's staff to interview her on the same basis as her  
attorneys and (2) compelling defendants to disclose information  
upon which their decision to deny Bronx Legal Services staff  
members to have access to plaintiff is based.

DATED: Bronx, New York

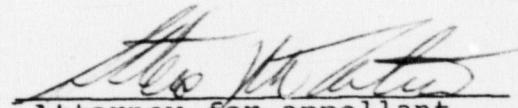
Yours, etc.,

DONALD GRAJALES, ESQ.  
Project Director  
BRONX LEGAL SERVICES, CORP. C  
579 Courtlandt Avenue  
Bronx, New York 10451  
Tel: 212-993-6250STEPHEN M. LATIMER, ESQ.,  
Of Counsel

\* \* \* \*

CERTIFICATE OF SERVICE

This is to certify that on July 25, 1975 the within Appendix and brief was served by mail on the attorneys for appellees at their offices c/o Corporation Counsel, Municipal Building, New York, N.Y.



\_\_\_\_\_  
Attorney for appellant



